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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

CHRISTINE ARANDA et al.,

Plaintiffs and Appellants,

v.

TEACHERS' RETIREMENT BOARD OF
THE STATE OF CALIFORNIA,

Defendant and Respondent.

D051803

(Super. Ct. No. GIC870668)

APPEAL from a judgment of the Superior Court of San Diego County, Steven R. Denton, Judge. Affirmed.

Plaintiffs and appellants Christine Aranda, Ed.D., and Alice De La Torre (together, appellants) appeal the trial court's denial of their writ of mandate brought under Code of Civil Procedure section 1094.5, subdivision (a). The trial court reviewed the administrative record and independently concluded the weight of evidence supported the finding of defendant and respondent Teachers' Retirement Board of the State of California (Board) that a retroactive salary increase of 14.84 percent, paid by the San

Ysidro School District (SYSD) only to appellants just weeks before they each retired, was for the principal purpose of enhancing their retirement benefits under the Defined Benefits Program (DB Program). Relying on Education Code¹ section 22119.2, subdivision (a), the court affirmed the Board's decision to exclude appellants' increased salaries in calculating their retirement benefits under the California State Teachers' Retirement System (CalSTRS).

On appeal, appellants argue the trial court erred when it concluded the Board committed harmless error by applying an outdated version of section 22119.2 to appellants' case. Appellants further argue that had the Board applied the version of section 22119.2 applicable when they retired, the Board would have found their 14.84 percent retroactive pay increases were "creditable compensation" and entitled them to retirement benefits under the DB Program.

We independently conclude the Board erred in applying the outdated version of section 22119.2 to appellants, but, like the trial court, we further conclude that error was harmless. We also conclude substantial evidence supports the finding that appellants' salary increases were for the principal purpose of enhancing their retirement benefits, a practice known as "spiking." We thus affirm the judgment.

¹ All further statutory references are to the Education Code unless otherwise specified.

FACTUAL AND PROCEDURAL BACKGROUND²

De La Torre began her employment with SYSD in 1995. In the last two years before she retired, De La Torre served as SYSD's assistant superintendent of personnel services.

SYSD hired Aranda in 2000 as its assistant superintendent of educational services. De La Torre and Aranda worked under SYSD superintendent Grace Kojima, until Kojima retired in October 2001. Aranda applied to become the new superintendent; however, SYSD hired Dr. Jose Torres, Ph.D, in November 2001 to replace Kojima.

A. Appellants Contemplated Retirement Shortly After Torres Was Hired

Appellants allege Torres provided limited leadership to his management team, lacked sufficient experience as a superintendent and spent the majority of his time preparing an assessment of SYSD, referred to as the "Wellness Report." Consequently, appellants took on additional responsibilities previously handled by Kojima, including: being responsible for the day-to-day operations of SYSD; setting, instead of implementing, policy for SYSD; and participating in the negotiation of the contract with the San Ysidro Educational Association (teachers' union). Appellants acknowledged they

² Under the substantial evidence standard of review, we "view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor in accordance with the standard of review so long adhered to by this court." (*Jessup Farms v. Baldwin* (1983) 33 Cal.3d 639, 660.) If the record demonstrates substantial evidence in support of the judgment, we must affirm even if there is substantial contrary evidence. (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 874.)

held positions of leadership within SYSD, and at times they had to work long hours and more than five days a week to complete their work.

Appellants further allege that after Torres took over as superintendent, he created difficult working conditions for them. As a result, they both contemplated retiring from SYSD.

De La Torre testified at the administrative hearing that in the spring of 2002, she had several meetings with Bonifacio Garcia, an attorney for SYSD, to discuss her dissatisfaction with Torres. During one of their meetings, Garcia told De La Torre that SYSD was considering reclassifying her position to "send a message" to Torres that SYSD considered De La Torre a valuable employee and that it wanted to retain her. Garcia also told De La Torre that if SYSD did not reclassify her position, it would have to give other SYSD employees, including its teachers, the same percentage salary increase it was contemplating giving appellants.

Aranda also testified at the administrative hearing. In December 2001 (just a few weeks after Torres was hired), at SYSD's request Aranda met with Garcia, two other attorneys for SYSD and two members of the San Ysidro School District Governing Board (SYSD Board) to discuss matters of concern involving Torres. Aranda was told SYSD had made a mistake in hiring Torres, and it planned to terminate him at its next meeting. Aranda agreed to accept the superintendent position after Torres was terminated.

At the next SYSD Board meeting, a large group comprised of community members and teachers turned out in support of Torres. As a result, SYSD did not

terminate Torres. Aranda was "very discouraged," "disgusted with" and "terribly embarrassed" by the conduct of the SYSD Board at the meeting—"that two members of the leadership of the Board would take such an action and take such a position without being very sure that they could carry it out. So my conclusion was that this Board . . . was dysfunctional." Torres subsequently learned Aranda had agreed to become the acting superintendent after he was terminated, which led to a further erosion of their relationship.

B. Aranda Announces Her Retirement, Effective June 29, 2002

Shortly after the SYSD Board meeting, Aranda decided to retire. De La Torre encouraged Aranda to reconsider her decision because the SYSD Board "was very concerned about what was happening to [them] under Dr. Torres," and because it was considering reclassifying their positions and increasing their salaries. Aranda, however, submitted her retirement application to CalSTRS on April 14, 2002, showing a retirement date of June 29, 2002. Aranda also submitted her resignation to the SYSD Board, which refused to accept it.

At a meeting held on June 8, 2002, the SYSD Board terminated Torres as SYSD superintendent and appointed Aranda as its "acting superintendent." It also gave both De La Torre and Aranda a 14.84 percent pay increase, retroactive to July 1, 2001, which was in addition to pay increases of about 9 and 3 percent appellants already had received to match the increases given to SYSD's teachers and other employees. Other than appellants, no other SYSD employees received the 14.84 percent pay increase. In addition, SYSD reclassified appellants' positions from "assistant" to "associate"

superintendents, without any change in their formal duties and without creating a job description for the new associate superintendent positions.

During the June 19, 2002, SYSD Board meeting, Aranda rejected SYSD's offer to become its "interim superintendent," and reiterated her intention to retire from SYSD. Aranda agreed, however, to continue serving as SYSD's "acting superintendent" in order to give SYSD additional time to find a replacement. Aranda changed her retirement date from June 29, 2002, to July 19, 2002.

C. De La Torre Also Announces Her Retirement, Effective July 1, 2002, Before Kojima Took Over as "Acting Superintendent"

Once De La Torre learned Aranda had made an irrevocable decision to retire, she too decided to retire from SYSD. De La Torre made the decision to retire July 19, 2002, retroactive to July 1, 2002. De La Torre testified she retired because the previous year had not been easy and she did not want to go through another difficult year, particularly when she did not know who would become SYSD's next superintendent.

Kojima testified at the administrative hearing that she agreed to come out of retirement in July 2002 and take over as SYSD's acting superintendent until SYSD hired a replacement, that she had been SYSD's superintendent from July 1988 until she initially retired in October 2001 and that she could not recall an instance when SYSD had given its administrators a 14.84 percent pay increase in a single year.

D. SYSD Was Aware Appellants Wanted to Retire When it Reclassified Their Positions and Gave them Retroactive Salary Increases

Yuri Calderon, legal counsel for SYSD,³ testified that SYSD knew De La Torre and Aranda wanted to retire when it raised appellants' salaries at the June 8 meeting, that there was no agreement between SYSD and appellants regarding reclassification of their positions by, and/or the increase in salary they received from, SYSD and that SYSD reclassified appellants' positions and gave them retroactive salary increases as an incentive not to retire from SYSD, or for them to wait at least a year to retire until it completed its search for a new superintendent. He also stated the reclassification and salary increases were given to appellants to reward them for their hard work under challenging circumstances and to make their salaries more competitive in comparison to other local school administrators.

Calderon further testified that appellants' replacements, Timothy Allen and Manuel Paul, were hired as assistant superintendents at a base salary of approximately \$106,000, and not as associate superintendents at the increased salaries appellants had received at retirement. Allen and Paul both testified they were unaware appellants had retired as associate superintendents at salaries above what they were paid.

³ The parties stipulated that then-SYSD Board members Ernestine Jones, Yolanda Hernandez and Jean Romero, if called as witnesses to testify in the administrative proceeding, would give the same testimony provided by Calderon.

E. The Board's Audit and Findings

Audit manager Randy Cortland testified at the administrative hearing on behalf of the Board. He performed the audit of SYSD, after it reported that Kojima had received a large salary increase in her final compensation period.⁴ During his investigation, Cortland discovered appellants also had recently retired from SYSD and also had received a large salary increase during their final compensation period.

After the audit, the Board prepared and circulated a "draft audit report" containing its preliminary findings and conclusions. Cortland testified that an executive management committee of the Board, and its general counsel, reviewed and approved the draft report before it was distributed to appellants and SYSD.

The draft report noted the Board did not object to the raises themselves, but that it owed a "duty to ensure that the amounts reported [by SYSD] as creditable compensation and used to determine the members' lifetime retirement benefits are consistent with sound funding principles in order to support the integrity of the Teachers' Retirement Fund." The report found SYSD promoted appellants and gave them each a 14.84 percent pay increase, retroactive to July 1, 2001, even though it was aware appellants wanted to retire from SYSD, that when Allen and Paul were hired to replace appellants, SYSD classified them at the positions previously held by appellants—assistant superintendents—and paid them less than they had paid appellants at retirement and that despite the reclassification of their positions, appellants' job responsibilities had remained the same.

⁴ Kojima is not party to this appeal.

Based on these findings, the Board tentatively concluded that appellants' reclassifications "were done for the principal purpose of enhancing [their] benefits" under the DB Program and that their monthly retirement allowances based on this increased salary were unlawful. It further concluded "consistent treatment of [appellants'] salaries in their career and consistent treatment within the class of employees were not maintained. The sound funding principal of consistent treatment is necessary to guard against one time adjustments that significantly increase a member's lifetime retirement benefits resulting in adverse selection."

Appellants and SYSD each submitted a detailed response to the draft report. The Board considered their responses before it issued a final audit report confirming its preliminary determination that appellants' salary increases were for the principal purpose of enhancing their retirement benefits.⁵

The final report included the following additional findings: SYSD upgraded appellants' positions "several months *after* [appellants] . . . assumed the extra responsibilities" they claimed justified their salary increases; the minutes of the June 8, 2002, SYSD Board meeting gave no explanation for appellants' promotions, and thus did not support SYSD's claim that appellants were promoted and given retroactive salary increases because they were underpaid and had assumed additional responsibilities

⁵ CalSTRS's final report concluded Aranda was entitled to retirement benefits at her increased salary for the period she acted as SYSD's interim superintendent, June 8, 2002, through June 30, 2002. This issue is not a subject of this appeal.

previously handled by the superintendent;⁶ SYSD failed to prepare a "job duties statement" for the newly created associate superintendent position, which prevented the Board from evaluating whether appellants' duties had in fact changed as a result of their promotions; just weeks before they retired, appellants "received a retroactive 14.84% pay *increase in addition to pay increases given to other employees*"; and as upper-level management, appellants already were obligated to undertake additional job responsibilities.

The final audit report noted De La Torre's monthly unmodified retirement allowance was overstated by \$1,189, with a present value cost to CalSTRS of \$168,817 based on actuarial assumptions. As for Aranda, the Board calculated her monthly unmodified retirement allowance was overstated by \$795, with a present value cost to CalSTRS of \$116,775. The Board ordered SYSD to correct the earnings of appellants, as set forth in the final report. Appellants subsequently refunded to CalSTRS the amount they were overpaid in retirement benefits.

F. Administrative Hearing

Appellants sought an administrative hearing. Following that hearing, the administrative law judge (ALJ) issued her findings and conclusions in a proposed decision, which the Board subsequently adopted.

⁶ Cortland testified that he also checked the minutes of SYSD Board meetings before and after the June 8 meeting, but they were silent regarding appellants' promotions by the SYSD.

The decision recognized the Board "has a duty to ensure that the amounts reported as creditable compensation and used to determine members' lifetime retirement benefits are consistent with sound funding principles in order to support the integrity of the Teachers' Retirement Fund." It further recognized the issue was *not* whether appellants deserved the reclassification of their positions and/or the increased salaries, but rather whether the "retroactive salary increases and reclassifications were done for the principal purpose of enhancing [appellants'] retirement benefits, otherwise known as 'spiking.' "

The Board in its decision applied the version of section 22119.2 in effect during appellants' final compensation period, 2001 to 2002 (former section 22119.2), and not the current version of section 22119.2 that became effective on July 1, 2002. The Board determined appellants failed to proffer sufficient evidence to rebut the presumption under subdivision (b)(10) of former section 22119.2 that their retroactive salary increases were for the principal purpose of enhancing their retirement benefits.

The decision also found that appellants had received a 14.84 percent retroactive pay increase shortly before they had retired from SYSD; that no SYSD employee "had received such a large salary increase in the final year prior to retirement"; that SYSD's standard practice was to give "authorized pay increases [to] the Assistant Superintendents that were consistent with the pay raise[s] received by the teachers for the 2000/2001 and 2001/2002 school years"; that the 14.84 percent pay increase received by appellants "stood alone"; that the "subsequent hires were brought in at the salaries of the Assistant Superintendents"; and that there was no "job duty statements for the new positions." It thus concluded the Board had established that appellants' "compensation was not

consistent throughout [their] careers and that the compensation was not consistent for the class of employees."

The decision also noted that when SYSD reclassified the positions of appellants and raised their salaries, it "did not consider the impact [its] action would have upon [appellants'] retirement benefits or the integrity of the teachers' retirement fund" and that the pay increases were to reward appellants "who suffered tremendous stress and often abusive working conditions" under Torres. The Board denied appellants' appeal.

F. Writ of Mandate

Appellants (but not SYSD) filed a writ of mandate under Code of Civil Procedure section 1094.5. The trial court applied the "independent judgment test" and denied the writ, concluding the administrative findings were supported by the weight of the evidence in the administrative record. The court noted the Board, in adopting the decision of the ALJ, applied the wrong version of section 22119.2. However, it also concluded that error was harmless.

The court further noted there was a lack of evidence in the record to support the reasons proffered by SYSD and appellants in their attempt to show appellants' salary increases were not for the principal purpose of enhancing their retirement benefits.

Specifically, the court found that if, as SYSD claimed, it increased appellants' salaries to convince them not to retire from SYSD, there was no reason to make those increases retroactive. In addition, the court found no evidence in the record to show SYSD sought any assurances from appellants that they would remain employed with SYSD in return for an increase in their salaries. The court also found the evidence in the

record showed SYSD knew appellants wanted to retire from SYSD when it reclassified their positions and increased their salaries.

The court next rejected SYSD's explanation that appellants' salary increases were compensation for the additional responsibilities they undertook and/or for the turmoil they endured between SYSD and Torres. It found that as a matter of law, SYSD could not "reward" appellants by giving them a salary increase, and, in any event, that the evidence in the record showed appellants' contracts with SYSD already obligated them to perform these duties.⁷ The court also noted that the lack of job descriptions for the new associate superintendent positions supported the finding that appellants' job responsibilities were the same after the promotion.

Finally, the court rejected SYSD's explanation that it raised appellants' salaries because the salaries of its most experienced teachers were approaching those of its administrators. Because principals, assistant principals and other administrators in SYSD work 20 more days per year than SYSD's teachers, SYSD claimed it raised appellants' salaries to incentivize teachers to become administrators, who were some of the lowest paid administrators in the County of San Diego.

The court found no evidence in the record to support this reasoning. It noted that if SYSD raised appellants' salaries in order to attract qualified candidates to replace

⁷ The issue of whether SYSD was permitted under Education Code section 35031 to grant retroactive salary increases to appellants, and whether appellants should be allowed to keep those increases as compensation, are not the subject of this appeal. Respondent instead challenges appellants' right to increased retirement benefits under the DB Program based on the retroactive salary adjustments.

appellants, as SYSD maintained, then it was illogical for SYSD to have made appellants' salary increases retroactive. In addition, the court found this reasoning unpersuasive in light of the evidence in the record showing appellants' replacements were hired as assistant superintendents and were paid about \$14,000 less per year than appellants. The trial court concluded the evidence in the record showed the "ability to attract and keep qualified Assistant Superintendents was not of concern to [SYSD]." The court thus denied the writ of mandate.

DISCUSSION

I

Standard of Review

Code of Civil Procedure section 1094.5, the state's administrative mandamus provision, sets forth the procedure for judicial review of an order or a decision by an administrative agency. (*Bixby v. Pierno* (1971) 4 Cal.3d 130, 137.) This statute contemplates that, at a minimum, the trial court must determine both whether substantial evidence supports the administrative agency's findings and whether the findings support the agency's decision. (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 514-515.) Subdivision (b) of Code of Civil Procedure section 1094.5 states that on a petition for a writ of mandate, a court's inquiry should extend, among other issues, to "whether there was any prejudicial abuse of discretion," which it defines to include instances where the administrative agency "has not proceeded in the manner required by law," the administrative order or decision "is not supported by the findings, or the findings are not supported by the evidence."

As the parties themselves recognize, the trial court's review of the administrative record is governed by the independent judgment rule. (See also *Strumsky v. San Diego County Employees Retirement Assn.* (1974) 11 Cal.3d 28, 32 (*Strumsky*); *California Teachers' Assn v. Governing Board* (1985) 169 Cal.App.3d 35, 41; *Purdy v. Teachers' Retirement Board* (1980) 113 Cal.App.3d 942, 949 (*Purdy*).) This rule provides that "[w]hen an administrative decision affects a legitimately acquired or 'vested' right, and that right is of a fundamental nature in terms of its economic effect on the individual, a full and independent judicial review of the decision must be undertaken." (*Swehla v. Teachers' Retirement Board* (1987) 192 Cal.App.3d 1088, 1092 (*Swehla*), citing *Strumsky, supra*, 11 Cal.3d at p. 34; see also *O'Connor v. State Teachers' Retirement System* (1996) 43 Cal.App.4th 1610, 1620.)

In reviewing the administrative decision, the trial court exercises its independent judgment on the evidence presented in the administrative hearing. (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 812, 817 (*Fukuda*).) The trial court must determine whether the weight of the evidence supports the agency's decision. (Code Civ. Proc., § 1094.5, subd. (c)⁸; *Fukuda, supra*, 20 Cal. 4th at p. 817.)

In so doing, however, the trial court must "begin its review with a presumption of the correctness of administrative findings, and then, after affording the respect due to

⁸ Subdivision (c) of Code of Civil Procedure section 1094.5 provides in part: "[w]here it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence."

these findings, exercise independent judgment in making its own findings." (*Fukuda, supra*, 20 Cal.4th at p. 819.) Such a procedure gives the trial court " 'the power and duty of exercising an independent judgment as to both facts and law, but contemplates that the record of the administrative board shall come before the court endowed with a strong presumption in favor of its regularity and propriety in every respect and that the burden shall rest upon the petitioner' " to convince the court that the administrative findings are contrary to the weight of the evidence. (*Id.* at p. 814, quoting *Sipper v. Urban* (1943) 22 Cal.2d 138, 144; see also *Valiyee v. Department of Motor Vehicles* (1999) 74 Cal.App.4th 1026, 1031.)

Moreover, an exercise of independent judgment "permit[s] (indeed, it requires) the trial court to reweigh the evidence by examining the credibility of witnesses." (*Barber v. Long Beach Civil Service Com.* (1996) 45 Cal.App.4th 652, 658 (*Barber*).) "[T]here is no inconsistency in a rule requiring that a trial court begin its review with a presumption of the correctness of administrative findings, and then, after affording the respect due to these findings, exercise independent judgment in making its own findings." (*Fukuda, supra*, 20 Cal.4th at p. 819.) "By reason of the importance of rights generally affected by administrative adjudications subject to the independent judgment test of review, California fixes responsibility for factual determination at the trial court rather than the administrative agency tier of the pyramid as a matter of public policy." (*Guymon v. Board of Accountancy* (1976) 55 Cal.App.3d 1010, 1015; see also *Barber, supra*, 45 Cal.App.4th at p. 659.)

This court reviews the trial court's factual findings for substantial evidence, even when the trial court was required to review the challenged administrative decision under the independent judgment test.⁹ (*Fukuda, supra*, 20 Cal.4th at p. 824; *Anserv Ins. Services, Inc. v. Kelso* (2000) 83 Cal.App.4th 197, 204; *Quintana v. Board of Administration* (1976) 54 Cal.App.3d 1018, 1024.) In so doing, we examine all relevant evidence in the administrative record, viewing it in the light most favorable to the judgment, resolving all conflicts in the evidence and drawing all reasonable inferences in support of the judgment. (*Young v. Gannon* (2002) 97 Cal.App.4th 209, 225.) "However, this court is not bound by the trial court's findings to the extent they constitute conclusions of law." (*Purdy, supra*, 113 Cal.App.3d at p. 949.)

II

Governing Law

A. *CalSTRS*

CalSTRS and teachers' retirement benefits are statutorily driven by a comprehensive legislative scheme known as the Teachers' Retirement Law. (§ 22000.) The Legislature created CalSTRS "to provide a financially sound plan for retirement, with adequate retirement allowances, of teachers in the public schools of this state,

⁹ We reject appellants' contention that a de novo standard of review applies here because the facts are not in dispute. Initially, we note the record shows there are factual disputes between the parties, including, by way of example only, whether SYSD was surprised by, or was expecting, appellants' retirements. Moreover, even if the facts were undisputed, because there are multiple inferences, rather than a "single inference and one conclusion" that can be drawn from such facts (*Mantonya v. Bratlie* (1948) 33 Cal.2d 120, 128-129), the de novo review standard is inapplicable. (*Ibid.*)

teachers in schools supported by this state, and other persons employed in connection with the schools" (§ 22001.) The Board administers the State Teachers' Retirement Fund, which includes the DB Program, where participation is mandatory for all employees meeting certain eligibility requirements (§ 22501), and the Defined Benefit Supplement Program (DBS Program), which is denoted as a "nominal account." (§§ 25000, 25004.) Income is derived from contributions from members, school districts, the state general fund and investment earnings. (§§ 22002, 22400.)

Under section 24202.5, subdivision (a)(1), a member is entitled to retirement benefits based on the "percentage of the final compensation" of the member. That percentage is determined by the member's age at retirement, as set forth in subdivision (a)(1) of section 24202.5. Once that figure is determined, it is then multiplied by "each year of credited service" to arrive at the member's annual retirement allowance, which is paid in monthly installments.¹⁰ (*Ibid.*) "Final compensation" is defined to mean "the highest average annual compensation earnable by a member during any period of three consecutive school years while an active member" (§ 22134); "compensation earnable" in turn means "the creditable compensation a person could earn in a school year for creditable service performed on a full-time basis." (§ 22115.)

¹⁰ Thus, for example, a member who retires at age 60 will be entitled to retirement benefits equal to two percent of the member's "final compensation" (§ 24202.5, subd. (a)(1)), multiplied by each year of "credited service." (*Ibid.*)

B. Operative Version of Section 22119.2

Appellants argue under Code of Civil Procedure section 1094.5, subdivision (b), the Board abused its discretion when it applied former section 22119.2 in determining that appellants' retroactive salary increases were for the principal purpose of enhancing their retirement benefits under the DB Program and therefore excluded such increases from appellants' retirement benefits. Appellants further argue that had the Board applied the current version of section 22119.2, it would have found their salary increases were not for the principal purpose of enhancing their retirement benefits, thus entitling them to a credit under the DB Program.

We independently conclude, and thus agree with the trial court, that the Board erred when it applied former section 22119.2 to appellants. Former section 22119.2 was operative through June 30, 2002, and current section 22119.2 went into effect on July 1, 2002. (See § 22119.2, subd. (g).¹¹) The evidence shows Aranda retired on July 19, 2002, and De La Torre submitted her retirement application on July 19, 2002, retroactive to July 1, 2002. Although the pay increases to appellants were made retroactive to July 1, 2001, the statute that governed their retirement benefits was the statute in effect on the date they retired—the current version of section 22119.2. (See

¹¹ Appellants' request for judicial notice, establishing the "revenue limit cost-of-living adjustments for the 2001-2002 fiscal year" in excess of 3.5 percent is granted. (§ 22119.2, subd. (g) [current section 22119.2 shall become operative on July 1, 2002 if the cost-of-living adjustment for the 2001-02 fiscal year "is equal to or greater than 3.5%"].) This court takes judicial notice of the fact the cost-of-living adjustment for 2001-02 was 3.87 percent.

Terry v. City of Berkeley (1953) 41 Cal.2d 698, 703; *In re Retirement Cases* (2003) 110 Cal.App.4th 426, 451; *Brooks v. Pension Board* (1938) 30 Cal.App.2d 118, 123.)

However, as we discuss herein, we also conclude the Board's error in applying former section 22119.2 to appellants' case was harmless.

1. *Former Section 22119.2*

Under former section 22119.2, "creditable compensation" was defined to mean "salary and other remuneration payable in cash by an employer to a member for creditable service." (Former § 22119.2, subd. (a).) In concluding appellants' retroactive 14.84 percent salary increases were excluded from their monthly retirement allowances under the DB Program, the Board relied on subdivision (b)(10) of former section 22119.2, which provided "creditable compensation" does *not* include: "Any payments determined by the board to have been made by an employer for the principal purpose of enhancing a member's benefits under the Defined Benefit Program. An increase in the salary of a member who is the only employee in a class pursuant to subdivision (b) of Section 22112.5 that arises out of an employer's restructuring of compensation during the member's final compensation period shall be presumed to have been granted for the principal purpose of enhancing benefits under the Defined Benefit Program and shall not be creditable compensation. If the board determines sufficient evidence is provided to the system to rebut this presumption, the increase in salary shall be deemed creditable compensation."

2. Current Section 22119.2

Section 22119.2, subdivision (a), defines "creditable compensation" to mean "remuneration that is payable in cash by an employer to all persons in the same class of employees and is paid to an employee for performing creditable service." Subdivision (b) of section 22119.2 provides: "Any salary or other remuneration determined by the board to have been paid for the principal purpose of enhancing a member's benefits under the plan shall not be credited under the Defined Benefit Program. Contributions on that compensation shall be credited to the Defined Benefit Supplement Program. A presumption by the board that salary or other remuneration was paid for the principal purpose of enhancing the member's benefits under the plan may be rebutted by the member or by the employer on behalf of the member. Upon receipt of sufficient evidence to the contrary, a presumption by the board that salary or other remuneration was paid for the principal purpose of enhancing the member's benefits under the plan may be reversed."

Subdivision (f) of section 22119.2 sets forth the policy underlying subsection (b). It provides: "This definition of 'creditable compensation' reflects sound principles that support the integrity of the retirement fund. Those principles include, but are not limited to, consistent treatment of compensation throughout a member's career, consistent treatment of compensation among an entire class of employees, preventing adverse selection, and excluding from compensation earnable remuneration that is paid for the principal purpose of enhancing a member's benefits under the plan. The board shall determine the appropriate crediting of contributions between the Defined Benefit

Program and the Defined Benefit Supplement Program according to these principles, to the extent not otherwise specified pursuant to this part." (§ 22119.2, subd. (f).)

Unlike former section 22119.2, all compensation received by a member under (current) section 22119.2 is considered creditable, and compensation determined by the Board to be for the principal purpose of enhancing a member's retirement benefits, beginning July 1, 2002, is placed in the DPS Program.¹² (§ 22119.2, subd. (b); Concurrence in Sen. Amends., Assem. Bill No. 2700 (1999-2000 Reg. Sess.) as amended Aug. 31, 2000, p. 1.)

The legislative history of section 22119.2 shows this statute was amended in 2000 partly because of CalSTRS's concern "that the [then] current process of excluding certain types of service and compensation from what is creditable for retirement increases the complexity of administering the defined benefit program," that CalSTRS "spend[s] considerable resources to monitor employer compliance with creditable service and compensation requirements" and that this bill "substantially reduce[s] this administrative

¹² By order dated September 11, 2008, we requested additional briefing from the parties regarding whether appellants are entitled to a credit under the DBS Program (§ 22119.2, subd. (b)), if this court were to conclude that appellants' retroactive salary increases were for the principal purpose of enhancing retirement benefits under the DB Program. Respondent's supplemental brief states the Board's final audit report directed SYSD to credit \$2,285 to the DBS Program on behalf of Aranda. Because De La Torre retired effective July 1, 2002, according to respondent she did not have any compensation transferred to the DBS Program. Appellants' supplemental brief likewise recognizes that compensation determined to be for the principal purpose of enhancing retirement benefits under the DP Program should be credited to appellants' DBS Program accounts. However, because the issue on appeal is whether appellants are entitled to a credit under the DP Program in the amount of their increased salaries, we need not, and do not, decide here whether appellants also are entitled to any credits under the DPS Program.

workload." (Concurrence in Sen. Amends., Assem. Bill No. 2700 (1999-2000 Reg. Sess.) as amended Aug. 31, 2000, p. 3.)

Under former section 22119.2, subdivision (b)(1), a rebuttable presumption the salary was paid to enhance retirement benefits arose when the increase was received by a member "who is the only employee" in his or her class as provided under subdivision (b) of section 22112.5, and when the member's salary was restructured "during the member's final compensation period." Current section 22119.2, subdivision (b), broadens the scope of this presumption. It allows the Board to presume a member's salary increase was paid for the principal purpose of enhancing the member's benefits, regardless of whether the member was the only employee in a class and regardless of when the increase was received. Current section 22119.2 requires the member (or his or her employer) to rebut this presumption by proffering "sufficient evidence to the contrary." (§ 22119.2, subd. (b).)

Despite the differences in the two statutes, there are similarities that are instructive here. Under both the former and current version of section 22119.2, the Legislature delegated to CalSTRS the authority to determine whether the principal purpose of a member's salary increase was to enhance his or her retirement benefits under the DP Program and the authority to disallow the increase absent sufficient contrary evidence provided by the member. (See e.g., § 22119.2, subd. (b), and former § 22119.2, subd. (b)(10).)

D. *Analysis*

Applying the independent judgment test of review, the trial court found the weight of the evidence in the administrative record supported the Board's decision to deny appellants credit under the DB Program based on the one-time, retroactive salary increases they alone received immediately before they each retired. We conclude substantial evidence in the administrative record supports the finding of the court that appellants' retroactive salary increases were for the purpose of enhancing their retirement benefits under section 22119.2.

Indeed, the evidence shows that appellants received the 14.84 percent pay increase just a few weeks before they each retired, that SYSD was aware appellants wanted to retire when it gave them salary increases; that the salary increases were made *retroactive* to July 1, 2001; that other than appellants, no SYSD employees received a similar pay increase; that former superintendent Kojima could not recall an instance when SYSD had given its administrators a 14.84 percent pay increase in a single year; that appellants had not received a similar pay increase in any previous years; that appellants already had received pay increases matching the increases received by teachers for the 2000-2001 and 2001-2002 school years; that SYSD did not condition appellants' pay increases on appellants staying employed with SYSD; that in their contracts with SYSD, appellants already were required to perform additional duties to "get the job done"; and that appellants' replacements were hired as assistant (and not as associate) superintendents at a salary of about \$106,000, roughly the amount appellants were making *before* their retroactive adjustments.

On this record, there is ample evidence to show that "consistent treatment of [appellants'] salaries in their career and consistent treatment within the class of employees were not maintained" and thus that appellants' 14.84 percent spike in pay, made retroactive to July 1, 2001, was for the principal purpose of enhancing their retirement benefits for purposes of subsections (b) and (f) of section 22119.2.

Appellants, however, argue the "undisputed" facts show the retroactive salary increases were given by SYSD for reasons other than to increase appellants' retirement benefits, and therefore substantial evidence does not support the trial court's denial of their writ. However, this argument ignores the fundamental principles of substantial evidence review, requiring us to view the record in the light most favorable to the judgment, resolving all conflicts in the evidence and drawing all reasonable inferences in support of the judgment. (*Young v. Gannon* (2002) 97 Cal.App.4th 209, 225.) This argument also ignores the rule that "[w]hen two or more inferences can be reasonably deduced from the facts, the reviewing court is without power to substitute its deductions for those of the trial court." (*Moran v. Board Of Medical Examiners* (1948) 32 Cal.2d 301, 308, quoting *Crawford v. Southern Pacific Co.* (1935) 3 Cal.2d 427, 429.)

As a court of review, we can neither reweigh the evidence nor pass on the credibility of witnesses. (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 631; *Estate of Young* (2008) 160 Cal.App.4th 62, 76.) Because there is substantial evidence in the administrative record to support the trial court's finding appellants' salary increases were paid by SYSD for the principal purpose of enhancing their retirement benefits, we

lack the power to reach a different result based on other inferences that could reasonably have been drawn from the evidence.

Appellants next argue the Board abused its discretion by not proceeding in the manner provided by law, as required under Code of Civil Procedure section 1094.5, subdivision (b), because the Board only considered two of the four principles set forth in section 22119.2, subdivision (f), in denying them credit under the BP Program for their increased salaries. Specifically, they argue the Board only considered the principles of "consistent treatment of compensation throughout a member's career" and "consistent treatment of compensation among an entire class of employees" (§ 22119.2, subd. (f)); and did not consider the principles of "preventing adverse selection" and "excluding from compensation earnable remuneration that is paid for the principal purpose of enhancing a member's benefits under the plan." (*Ibid.*)

We reject this contention. We note from the plain language of the statute (*Absher v. AutoZone, Inc.* (2008) 164 Cal.App.4th 332, 339) that the Legislature gave the Board broad discretion to determine "the appropriate crediting of contributions between the Defined Benefit Program and the Defined Benefit Supplement Program" (§ 22119.2, subd. (f)); that in making this determination, the Board should consider the principles identified in subdivision (f) of section 22119.2, but that it is not required to grant "equal weight" to each principle, as appellants contend; and that the Board may consider principles other than those in subdivision (f) to ensure the "integrity of the retirement fund" is maintained. (§ 22119.2, subd. (f).)

We further reject this contention because the trial court found the weight of the evidence in the administrative record supported the Board's finding that appellants' salary increases were "for the principal purpose of enhancing a member's benefits under the plan." (§ 22119.2, subd. (f).) As noted, we also conclude there is substantial evidence in the record to support the trial court's finding. Thus, this principal or factor was in fact satisfied here.

Appellants also argue "it is the [SYSD] Board's intent in granting the retroactive raises to appellants which is determinative" of whether those raises were for the principal purpose of enhancing their benefits. However, this argument requires us to ignore the law giving the Board "*sole* power and authority to hear and determine all facts pertaining to application for benefits under the plan or any matters pertaining to administration of the plan and the system." (§ 22201, subd. (a), *italics added*; see also Cal. Const., art. XVI, § 17 ["Notwithstanding any other provisions of law or this Constitution to the contrary, the retirement board of a public pension or retirement system shall have plenary authority and fiduciary responsibility for investment of monies and administration of the system"].) The Board also exclusively controls the administration and investment of those funds (§§ 22202, 22203), and, upon receipt of an application for retirement from a member, it determines a member's retirement allowance based on a set formula. (§ 24202.5 [retirement formula and allowance for members who retire on or after January 1, 1999].)

Appellants' argument would also severely undermine the basic purpose of CalSTRS, which is to "provide a financially sound plan for the retirement, with adequate

retirement allowances" of teachers and other persons employed in our public schools. (§ 22001.) It also would interfere with the broad discretion given the Board in determining whether a payment to a member is for the "principal purpose of enhancing a member's benefits" within the meaning of section 22119.2, subdivision (b).

We thus reject appellants' argument that the intent of an employer should govern the determination of whether a payment was for the principal purpose of enhancing a member's benefit under the DP Program. Such a test is not only contrary to the law, but it also would have the potential to undermine the integrity of the retirement fund. (See § 22119.2, subd. (f).)

Finally, appellants contend the Board abused its discretion and they suffered prejudice when it applied the wrong version of section 22119.2 in their case. Although, as we have noted, the Board relied on former section 22119.2, subdivision (b)(10), and found the presumption therein applied despite there being more than *one* employee in a class subject to subdivision (b) of section 22112.5, as the trial court recognized there also was a separate, universal exclusion in subdivision (b) that was *not* dependent on an employee's classification, which supported the Board's determination. (See former § 22119.2, subd. (b)(10).)

Moreover, section 22112.5, referenced in subsection (b)(10) of former section 22119.2, defines the term "class of employees" and delegates to CalSTRS the "right to override the determination by an employer as to whether or not a *group* or an individual constitutes a 'class of employees' within the meaning of this section." (§ 22112.5, subd. (c), italics added.) Thus, although appellants contend the Board erred by applying

subdivision (b)(10) of former section 22119.2 because their "class of employees" was comprised of two (e.g., Aranda and De La Torre), and not one, subdivision (c) of section 22112.5 gives CalSTRS, and *not* SYSD, the authority to make that determination. We thus conclude the Board's error in applying former section 22119.2 to appellants' case did not result in a "prejudicial abuse of discretion" under Code of Civil Procedure section 1094.5, subdivision (b).

DISPOSITION

The judgment of the trial court, denying appellants' writ of mandate, is affirmed. Respondent to recover its costs on appeal.

BENKE, Acting P. J.

WE CONCUR:

HUFFMAN, J.

NARES, J.